

Message Text

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ORIGIN EB-08

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R 251305Z AUG 78
FM SECSTATE WASHDC
TO AMEMBASSY BUENOS AIRES

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E.O. 11652: N/A

TAGS: EAIR, AR

SUBJECT: CIVAIR: CALIFORNIA PROPERTY TAX

REF: STATE 169382

1. DEPARTMENT RECEIVED FROM ARGENTINE EMBASSY ON
AUGUST 18, A DIPLOMATIC NOTE CONCERNING A PROPOSED
CALIFORNIA PROPERTY TAX WHICH WOULD BE IMPOSED ON
AIRCRAFT. DEPARTMENT HAD DEALT WITH THIS SUBJECT IN
REFTEL WHICH IT WILL REPEAT TO BUENOS AIRES.

2. TEXT OF ARGENTINE NOTE FOLLOWS:

QUOTE COMPLIMENTS, AND HAS THE HONOR TO REFER TO A
PROPOSAL MADE BY THE CALIFORNIA STATE BOARD OF EQUALIZATION
ON MARCH 15, 1978, WHICH WOULD ENABLE THE STATE OF
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CALIFORNIA AND THE LOCAL COUNTRY ASSESORS OF CALIFORNIA
TO LEVY A PERSONAL PROPERTY TAX ON AIRCRAFT OWNED AND
OPERATED BY FOREIGN AIRLINES IN FOREIGN COMMERCE TO AND
FROM THE STATE OF CALIFORNIA.

THE EMBASSY OF THE ARGENTINE REPUBLIC RESPECTFULLY
SUBMITS THAT THE IMPOSITION OF A PROPERTY TAX ON

AIRCRAFT OWNED BY AN ARGENTINE AIRLINE OPERATING INTO AND OUT OF CALIFORNIA WOULD BE IN BREACH OF THE UNITED STATES TREATY OBLIGATIONS SET FORTH IN ARTICLE 2.F.3. OF THE "MEMORANDUM OF UNDERSTANDING" SIGNED BETWEEN OUR TWO COUNTRIES AND APPROVED ON SEPTEMBER 22, 1977.

THE EMBASSY OF THE ARGENTINE REPUBLIC BELIEVES THAT THE INTRODUCTION OF A PROPERTY TAX OVER ANY ARGENTINE AIRCRAFT ENGAGED IN FOREIGN COMMERCE UNDER THE TERMS OF THE RELATED AGREEMENT WOULD BE STRAIGHTLY AGAINST THE SENSE OF THE REFERRED PROVISION OF ARTICLE 2.F.3., ESPECIALLY CONSIDERING THAT THE COMMITMENT SET FORTH THEREIN, TO THE EFFECT OF GETTING EXEMPTION FROM TAXES FOR THE DESIGNATED AIRLINES OF EACH COUNTRY, WAS ASSUMED WHEN NO TAX, SUCH AS THE PROPOSED BY THE STATE OF CALIFORNIA, EXISTED.

THE EMBASSY OF THE ARGENTINE REPUBLIC RESPECTFULLY SUBMITS THAT THE IMPOSITION OF A PROPERTY TAX ON AIRCRAFT OWNED BY FOREIGN AIRLINES OPERATING INTO AND OUT OF CALIFORNIA WOULD DIRECTLY CONTRAVENE THE UNITED STATES OBLIGATIONS SET FORTH IN ARTICLE 24 OF THE CONVENTION ON INTERNATIONAL CIVIL AVIATION AND THE UNITED STATES REPRESENTATIONS TO THE OTHER CONTRACTING STATES OF THE CONVENTION WITH RESPECT TO THE EXEMPTION LIMITED OFFICIAL USE

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FROM PROPERTY TAXES ON AIRCRAFT ENGAGED IN INTERNATIONAL AIR TRANSPORTATION, AS SET FORTH IN THE SUPPLEMENT TO THE INTERNATIONAL CIVIL AVIATION ORGANIZATION (ICAO) DOCUMENT 8632-C/968.

THE EMBASSY OF THE ARGENTINE REPUBLIC RESPECTFULLY INVITES THE ATTENTION OF THE DEPARTMENT OF STATE TO THE LANGUAGE OF ARTICLE 24 OF THE CONVENTION ON INTERNATIONAL CIVIL AVIATION WHICH STATES THAT "AIRCRAFT ON A FLIGHT TO, FROM, OR ACCROSS TERRITORY OF ANOTHER CONTRACTING STATE ARE TO BE ADMITTED TEMPORARILY FREE OF DUTY". IN THE OPINION OF THIS EMBASSY THE EXEMPTION FROM "DUTY" PROVIDED BY THE CONVENTION MUST NECESSARILY INCLUDE AN EXEMPTION FROM PROPERTY TAXES, WHETHER ATTEMPTED TO BE IMPOSED BY THE UNITED STATES OR AMERICA ITSELF OR BY ANY INDIVIDUAL STATE OR POLITICAL SUBDIVISION THEREOF. IF THIS WERE NOT SO, THE EXEMPTION FROM "DUTY" WOULD HAVE LITTLE PRACTICAL VALUE OR MEANING.

THE ATTENTION OF THE DEPARTMENT OF STATE IS ALSO INVITED TO SECTION III OF THE ICAO "COUNCIL RESOLUTION OF 14 NOVEMBER 1966 ON TAXATION OF THE INCOME OF

INTERNATIONAL AIR TRANSPORTATION ENTERPRISES AND ON

TAXATION OF AIRCRAFT", AND PARTICULARLY CLAUSE (1) (B) THEREOF, WHICH STATES: "(1) EACH CONTRACTING STATE SHALL, TO THE EXTENT POSSIBLE, GRANT RECIPROCALLY, (B) EXEMPTION FROM PROPERTY TAXES, AND CAPITAL LEVIES OR OTHER SIMILAR TAXES, ON AIRCRAFT OF OTHER CONTRACTING STATES ENGAGED IN INTERNATIONAL AIR TRANSPORT." IN FURTHER ACCORDANCE WITH THIS RESOLUTION, THE DEPARTMENT OF STATE IS REMINDED THAT EACH CONTRACTING STATE, INCLUDING THE UNITED STATES, WAS TO NOTIFY ICAO OF THE EXTENT TO WHICH IT PREPARED TO TAKE ACTION IN ACCORDANCE WITH THE PRINCIPLES OF THIS RESOLUTION. IN THIS REGARD, THE UNITED STATES SPECIFICALLY AND UNEQUIVOCALLY LIMITED OFFICIAL USE

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REPRESENTED TO THE OTHER CONTRACTING STATES OF ICAO THAT: "THE UNITED STATES IS ACCORD WITH THE PRINCIPLES SET FORTH IN THIS CLAUSE AND, IN ACCORDANCE WITH ITS EXISTING LAWS, HAS FOR A LONG PERIOD OF TIME FOLLOWED THE PRACTICE OF GRANTING THE EXEMPTIONS PROVIDED FOR IN THIS CLAUSE THROUGH BILATERAL AGREEMENTS WITH OTHER COUNTRIES, OR, IN APPROPRIATE CASES, BY MEANS OF ADMINISTRATIVE RULINGS". THE UNITED STATES THEN DECLARED THAT SUCH AGREEMENTS HAVE BEEN CONCLUDED WITH COUNTRIES, INCLUDING A LIST OF OVER FORTY COUNTRIES. THUS, IT IS RESPECTFULLY THE OPINION OF THIS EMBASSY THAT THE UNITED STATES HAS ALREADY COMMITTED ITSELF TO A PRACTICE OF EXEMPTING AIRCRAFT OPERATING UNDER THE FLAG OF ARGENTINA AND WHICH ARE ENGAGED IN INTERNATIONAL AIR TRANSPORTATION FROM THE LEVY OF ANY PROPERTY TAX WITHIN THE UNITED STATES.

THE EMBASSY OF THE ARGENTINE REPUBLIC BELIEVE; THAT THE IMPOSITION OF A PROPERTY TAX ON THE AIRCRAFTS OF NON-U.S. AIRLINES OPERATED TO OR FROM THE UNITED STATES OF AMERICA IN FOREIGN COMMERCE WILL LEAD TO THE IMMEDIATE TAXATION OF AIRCRAFT OF U.S. AIRLINES BY FOREIGN GOVERNMENTS AND THEIR LOCAL POLITICAL SUBDIVISIONS. ONCE THE UNITED STATES ABANDONS THE PRINCIPLE OF RECIPROCAL EXEMPTION FROM PROPERTY TAXATION OF AIRCRAFT, THERE IS LITTLE REASON OTHER GOVERNMENTS WILL HAVE TO REFRAIN FROM IMPOSING SIMILAR, RETALIATORY PROPERTY TAXES. NO ONE STANDS TO GAIN FROM SUCH AN ESCALATION OF TRADE BARRIERS AS WOULD COME ABOUT. LEAST OF ALL CARRIERS OF THE UNITED STATES WHICH WOULD FIND THEMSELVES WITH AIRCRAFT SUBJECT TO PROPERTY TAX IN MANY FOREIGN JURISDICTIONS.

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THE EMBASSY OF THE ARGENTINE REPUBLIC IS DEEPLY CONCERNED WITH THE POSSIBLE INTERNATIONAL COMPLICATIONS WHICH COULD RESULT IF THE STATE OF CALIFORNIA WERE TO IMPOSE A PROPERTY TAX ON FOREIGN AIRCRAFT OPERATED IN FOREIGN COMMERCE, AND RESPECTFULLY REQUESTS THAT IMMEDIATE AND APPROPRIATE ACTION BE TAKEN TO PREVENT THE IMPOSITION OF A PROPERTY TAX ON FOREIGN-REGISTERED AIRCRAFT BY THE STATE OF CALIFORNIA IN ORDER TO ASSURE CONTINUED GRWOTH AND DEVELOPMENT OF TRADE AND OTHER RELATIONS BETWEEN OUR TWO COUNTRIES. UNQUOTE CHRISTOPHER

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